

REMARKS

Claims 1-7 and 9-50 are pending. Claims 24, 40, and 44-46 have been amended.

Applicants sincerely thank the Examiner for the careful and thoughtful review given to the present application.

In the Office Action dated January 12, 2005, claims 24-35 and 40-46 were rejected as directed to non-statutory subject matter. Applicants do not agree with this rejection, but have amended claims 24, 40, and 44-46 to more clearly emphasize the (previously implied) limitation that the claimed systems are computer systems. In light of these amendments, the non-statutory subject matter rejection of claims 24-35 and 40-46 is believed to be overcome.

The Office Action rejects Applicants' challenge to the taking of Official Notice in the preceding action. Applicants respectfully disagree.

Applicants concede that MPEP §2144.03 contains the statement: To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art." However, Applicants respectfully submit that this statement, in itself, is nonsensical, and therefore must be read in the context of the other language in MPEP § 2144.03.

The statement is nonsensical in that it requires applicants to demonstrate what cannot be demonstrated. It is possible to prove that something *is* in the prior art; it is *not* possible to prove that something is *not* in the prior art. Likewise, it is not possible to prove that something is *not* common knowledge. Nor is it possible to explain why something is not common knowledge. If the Patent Office disagrees, Applicants respectfully request an example of such proof or explanation. For example, please explain why the telephone was not common knowledge two years before it was invented.

In any event, reading the quoted statement in the context of the surrounding language of section 2144.03 shows that the rule is not as stated in the above-quoted excerpt..

The two sentences in section 2144.03 preceding the sentence quoted in the Office Action read as follows:

The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. The applicant should be presented with the explicit basis on which the examiner regards

the matter as subject to official notice and be allowed to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made.

The referenced case law (*Chevenard*) only requires an applicant to demand that the examiner produce authority for the matter being Officially Noticed – it doesn't require an applicant to state why the noticed fact is not common knowledge. Likewise, the sentence following the above-quoted statement further clarifies it: "A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate." Thus, all that is required to properly traverse a taking of Official Notice is that the applicant demand documentary evidence from the examiner.

Simple fairness also dictates that applicants not be required to "explain why the noticed fact is not considered to be common knowledge" in order properly traverse a taking of Official Notice. Such a rule would allow an examiner to reject claims based on "prior art" that does not exist, unless applicants can explain why that prior art does not exist (an impossible task). This completely removes the examiner's burden of proof and shifts it to the applicant.

Moreover, all of the other language of MPEP § 2144.03 is contrary to the Examiner's interpretation of the isolated sentence quoted in the Office Action:

Official Notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.

[A] ssertions of . . . specific knowledge in the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art.

[A]n assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support.

Thus, Applicants respectfully reiterate the request made in the preceding Response regarding Official Notice taken in this case. As demonstrated above, that request *is adequate* to require the Patent Office to provide documentary evidence for each "fact" Officially Noticed. Moreover, Applicants respectfully submit that, in the absence of such evidence, the present Office Action should not have been made Final.

Claims 1-13, 17-21, 24-30, 36, 40-44, and 47-50 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,804,660, to Landau et al. This rejection is respectfully traversed.

The Office Action states:

As to claims 1-13, 17, 21, 24, 36, 40, 44, 47-50, LANDAU discloses . . . a network of affiliates to EM1, EM1's serving as affiliates to EM2's, links and identifiers of RF's and EM1's and the storing of those links, providing a first link to reach a first e-site (EM1) , then the first e-site providing a second link to reach a second e-site (EM2) from EM1, (see at least Fig. 7 and associated text ; col. 15 lines 66 to col. 20 line 2: for example, referring to the discussion in cols. 17-18, fred.com could be the RF, CD Merchant.com could be EM1 , Musicmemorabilia.com could be EM2).

Applicants respectfully submit that the above grounds for rejection of claims 1-13, etc. are insufficient. Anticipation requires that each and every limitation of the rejected claim is taught in a single prior art reference. That is not the case here.

Claim 1, for example, requires a step of providing compensation to both RF and EM1 (using the notation of the Office Action):

compensating entities associated with said first and second navigational links after a network-connected user utilizes said first navigational link to reach said first e-commerce site, utilizes said second navigational link to reach said second e-commerce site and completes a commercial transaction at said second e-commerce site.

Landau does not teach or enable such a step, and the Office Action does not allege that Landau teaches that step. Indeed, Landau appears to teach providing compensation only to RF. See col. 19, lines 25-36, regarding fred.com's \$5.00 commission.

Consequently, the Office Action does not provide sufficient grounds for rejecting claims 1-13, 17, 21, 24, 36, 40, 44, 47-50, under 35 U.S.C. 102(e), and that rejection should be withdrawn.

Since the rejections of all of the other claims are based on the assumption that the limitations of claim 1 are taught by Landau, all of those other rejections are likewise insufficient and should be withdrawn.

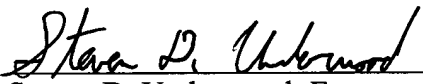
Further, Applicants again object to the taking of Official Notice of the “fact” that “it is well-known to use different mathematical algorithms to share commissions between referring parties.” Applicants respectfully request that the Patent Office provide a prior art reference for this Officially-Noticed “fact,” or withdraw that Notice in the next office action. If, as the Patent Office asserts, that “fact” is truly well-known, providing a reference should be easy. If such a reference cannot be found by the Examiner, then the “fact” is clearly *not* well-known.

If the Patent Office, contrary to the MPEP, continues to assert that Applicants must explain why that fact is not well-known, suggestions as to how to provide such an explanation will be appreciated. In Applicants’ view, it is not possible to explain why something not in the prior art is not in the prior art, or why something not well-known is not well-known.

No fee (other than the extension fee authorized above) is believed due with this Response. However, if any fee is due, please charge that fee to Deposit Account No. 50-0310.

Respectfully submitted,

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